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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 TERRY FABRICANT individually
11 and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 SUNSET WEST LEGAL GROUP,
16 PC
17 and
18 QUINTESSA LLC D/B/A THE
19 INJURY HELP NETWORK

20 Defendants.

Case No. 2:24-cv-04264-FLA-MAA

**FIRST AMENDED COMPLAINT
FOR INJUNCTION AND
DAMAGES**

Class Action

JURY TRIAL DEMAND

21 Plaintiff Terry Fabricant (“Mr. Fabricant”), by his undersigned counsel, for
22 this Amended class action complaint against Sunset West Legal Group, PC
23 (“Sunset”) and Quintessa LLC d/b/a The Injury Help Network (“Quintessa”) and
24 their present, former and future direct and indirect parent companies, subsidiaries,
25 affiliates, agents and related entities, allege as follows:
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I. INTRODUCTION

1. Nature of Action: As the Supreme Court has explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

2. This case involves a campaign by Sunset to generate personal injury leads for its law firm using vendors like Quintessa to place illegal robocalls in alleged violation of the TCPA.

3. Because telemarketing campaigns generally place calls to thousands or even millions of potential customers *en masse*, Plaintiff brings this action on behalf of a proposed nationwide class of other persons who received illegal telemarketing calls from or on behalf of Defendant.

II. PARTIES

4. Plaintiff is an individual.

5. Defendant Sunset West Legal Group, PC is a California corporation located in this District.

6. Defendant Quintessa LLC, which does business under the fictitious name “The Injury Help Network,” is an Oklahoma City-based provider of motor vehicle accident leads for attorneys.

III. JURISDICTION AND VENUE

7. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff’s TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012).

8. Personal Jurisdiction: This Court has general personal jurisdiction over Defendant Sunset because it is headquartered and has its principal place of business in this District. This Court has specific personal jurisdiction over Quintessa because it contracted with a corporation headquartered in this District to send illegal robocalls for and generate leads which would be performed in this District.

1 implementing the TCPA, such calls are prohibited because, as Congress found,
2 automated or prerecorded telephone calls are a greater nuisance and invasion of
3 privacy than live solicitation calls, and such calls can be costly and inconvenient.
4

5 14. In 2013, the FCC required prior express written consent for all
6 autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers
7 and residential lines. Specifically, it ordered that:
8

9 [A] consumer’s written consent to receive telemarketing robocalls must
10 be signed and be sufficient to show that the consumer: (1) received
11 “clear and conspicuous disclosure” of the consequences of providing
12 the requested consent, i.e., that the consumer will receive future calls
13 that deliver prerecorded messages by or on behalf of a specific seller;
14 and (2) having received this information, agrees unambiguously to
15 receive such calls at a telephone number the consumer designates.[] In
16 addition, the written agreement must be obtained “without requiring,
17 directly or indirectly, that the agreement be executed as a condition of
18 purchasing any good or service.[]”

19 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
20 *1991*, 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

21 **B. Defendant’s Unsolicited Pre-Recorded Telemarketing to Plaintiff**

22 15. Plaintiff is, and at all times mentioned herein was, a “person” as
23 defined by 47 U.S.C. § 153(39).

24 16. Plaintiff’s cellular telephone number is (818) XXX-XXXX.

25 17. Mr. Fabricant never provided his prior express written consent to
26 receive calls from neither Defendant Sunset West nor Defendant Quintessa.
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1 18. Despite this, Defendant Quintessa, as part of a telemarketing
2 campaign Sunset West hired it to perform, sent Plaintiff at least three pre-recorded
3 telemarketing calls on April 20, 2024, from the Caller ID 818-764-0085.
4

5 19. The pre-recorded telemarketing calls all played an identical
6 prerecorded message.
7

8 20. This message was voiced in the same voice and played the same exact
9 scripted message, stating that the caller had information that the Plaintiff had been
10 “involved in an accident in the last two years” for which he had “not been paid”
11 and asked if he wanted to speak with someone about making a legal claim for
12 compensation.
13

14 21. The Plaintiff interacted with the recorded message to identify the
15 caller calling him illegally with an anonymous pre-recorded message by interacting
16 with the robot.
17

18 22. The Plaintiff was then connected to an individual who works for
19 Quintessa, who stated they were from the “injury help network. This individual
20 asked Plaintiff about accidents and provided a call back number of 888-306-5365.
21

22 23. This Quintessa employee on the April 20 call asked the Plaintiff for
23 details about the accident in which he was involved. This was done, upon
24 information and belief, at Sunset West’s direction, so that Sunset West could
25 ascertain and purchase only those leads which met its criteria.
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1 24. Moreover, this unnamed individual confirmed that they called the
2 Plaintiff's cellular telephone number (818) XXX-XXXX with the pre-recorded
3 message.
4

5 25. Upon information and belief, "injury help network" is a D/B/A used
6 by the Defendant Quintessa.
7

8 26. Thereafter, that number was called to ascertain information as to who
9 was calling Mr. Fabricant illegally. The individuals stated they were from the
10 "injury help network," and relentlessly sent text messages and voicemails,
11 including from the phone number 805-892-6365 and providing the callback
12 number of 888-501-1788.
13
14

15 27. The text message, which, upon information and belief was sent by
16 Quintessa, stated "Hello, this is Faith, your Follow Up Friend with The Injury
17 Claim Network. You were speaking with one of our representatives
18 regarding the accident you were involved in. My direct number is 888-501-
19 1788. Over the next 14 days, I will be following up with you regarding any
20 questions you may have. The law firm will be investigating your potential case and
21 after accepting your case they will be pulling the police report, speaking with the
22 insurance company, and setting you up with the treatment necessary, amongst
23 many other things. The law firm's name is Sunset West Legal Group. The main
24 office number is 310-282-8888, and the website is <https://www.sunsetwestlg.com/>.
25
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1 If you have any questions or concerns don't hesitate to call me directly or text me
2 here. I look forward to assisting you throughout the process. Have a good day!"

3
4 28. This text message in particular was sent, understood, and meant to any
5 reasonable person that Quintessa was acting as an agent for Sunset in onboarding a
6 potential client and processing a legal personal injury claim.

7
8 29. Furthermore, Quintessa evidently had the authority to sign up clients
9 using Sunset's retainer agreement.

10
11 30. Defendant Sunset was therefore identified as the law firm that hired
12 Quintessa to make the illegal calls for it and generate the Plaintiff's lead.

13
14 31. Defendant Sunset continued to call the Plaintiff, including after an
15 attorney for Defendant Sunset responded to counsel for Plaintiff's request for an
16 investigation as to why the Plaintiff continued to receive illegal calls on April 22.
17 Counsel for Defendant Sunset assured counsel that the Plaintiff would receive no
18 further calls.

19
20 32. Unsurprisingly, the calls from Sunset continued. For example, Sunset
21 called the Plaintiff at 4:29 PM on April 23, 2024 from the caller ID 424-375-6809.

22
23 33. Defendant Sunset also sent the Plaintiff a text message on April 23,
24 2024 from the number 405-977-4484 with Defendant Sunset's website,
25 sunsetwestlg.com.
26
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1 34. Defendant Sunset ratified Quintessa's conduct by accepting the lead
2 and referral generated as a result of Quintessa's illegal telemarketing conduct.

3 35. For more than twenty years, the FCC has explained that its "rules
4 generally establish that the party on whose behalf a solicitation is made bears
5 ultimate responsibility for any violations." *In re Rules and Regulations*
6 *Implementing the Telephone Consumer Protection Act*, 10 FCC Rcd. 12391, 12397
7 ¶ 13 (1995).

8 36. In 2008, the FCC likewise held that a company on whose behalf a
9 telephone call is made bears the responsibility for any violations.

10 37. The FCC has instructed that sellers such as Sunset may not avoid
11 liability by outsourcing telemarketing to third parties, such as Quintessa:
12 [A]llowing the seller to avoid potential liability by outsourcing its telemarketing
13 activities to unsupervised third parties would leave consumers in many cases
14 without an effective remedy for telemarketing intrusions. This would particularly
15 be so if the telemarketers were judgment proof, unidentifiable, or located outside
16 the United States, as is often the case. Even where third-party telemarketers are
17 identifiable, solvent, and amenable to judgment, limiting liability to the
18 telemarketer that physically places the call would make enforcement in many cases
19 substantially more expensive and less efficient, since consumers (or law
20 enforcement agencies) would be required to sue each marketer separately in order
21 to obtain effective relief. As the FTC noted, because "sellers may have thousands
22 of 'independent' marketers, suing one or a few of them is unlikely to make a
23 substantive difference for consumer privacy."

24 *In re DISH Network, LLC*, 28 FCC Rcd. 6574, 6588 ¶ 37 (2013) (cleaned up).

25 38. In 2013, the FCC held that a corporation or other entity that contracts
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1 out its telephone marketing “may be held vicariously liable under federal common
2 law principles of agency for violations of either section 227(b) or section 227(c)
3 that are committed by third-party telemarketers.” *Id.* at 6574 ¶ 1.
4

5 39. Sunset is liable for telemarketing calls placed by Quintessa and
6 transferred to Sunset to generate customers for Sunset, including the Plaintiff.
7

8 40. Sunset was interested in hiring a lead generator that could make phone
9 calls to potential customers, vet potential clients, and get clients in the door who
10 had already signed and executed retainer agreements with Sunset, so it hired
11 Quintessa, as Quintessa openly advertises this process as its specialty.
12

13 41. To do so, it hired Quintessa to orchestrate an *en masse* telemarketing
14 campaign.
15

16 42. Sunset controlled the day-to-day activities of Quintessa by providing
17 the specific criteria for the clients it would accept and required its vendors,
18 including Quintessa, to adhere to those criteria.
19

20 43. For instance, Sunset directed and authorized Quintessa to intake and
21 provide retainers to clients and for Quintessa to represent Sunset in such
22 contractual negotiations on Sunset’s behalf.
23

24 44. Sunset authorized Quintessa to use the Sunset name, authorized
25 Quintessa representatives to state that they were going to receive calls from Sunset
26 and inform potentially interested persons that Sunset would handle the
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1 administrative aspects of the legal claim, like obtaining police reports and other
2 records.

3 45. Sunset would only compensate Quintessa if Quintessa provided
4 Sunset with a client who had signed Sunset's retainer agreement and otherwise met
5 the criteria that Sunset set.
6

7 46. Sunset also could have prohibited Quintessa from using pre-recorded
8 messages to generate leads.
9

10 47. It did not.
11

12 48. Finally, Sunset could have terminated Quintessa once it learned of
13 Quintessa's illegal marketing conduct.
14

15 49. It did not.

16 50. This conduct is especially alarming because Quintessa is a habitual
17 offender that is well known in the TCPA space, having been sued multiple times
18 for using prerecorded messages to generate leads in violation of the TCPA.
19

20 51. A reasonable seller would investigate why the telemarketers it has
21 hired to generate leads are being sued for illegal lead generation conduct.
22

23 52. Moreover, a reasonable seller would also investigate into the reasons
24 why their marketer would be calling numbers using highly illegal prerecorded e
25 messages.
26

27 53. Indeed, Sunset could have investigated if the leads it received were
28

1 generated based on prerecorded calls, whether the leads purchased were legitimate,
2 or if Quintessa was using prerecorded messages at all.

3 54. It did not.

4
5 55. Sunset hired Quintessa without a proper investigation and did not
6 terminate them when they were informed of Quintessa's illegal calling conduct.

7
8 56. As such, they knowingly ratified Quintessa's conduct.

9 57. Sunset accepted the Plaintiff's lead and then utilized it for a benefit by
10 continuing to promote its services to him.

11
12 58. The 2013 FCC ruling holds that called parties may obtain "evidence
13 of these kinds of relationships . . . through discovery, if they are not independently
14 privy to such information." *In re DISH Network*, 28 FCC Rcd. 6592-93 ¶ 46.

15
16 Evidence of circumstances pointing to apparent authority on behalf of the
17 telemarketer "should be sufficient to place upon the seller the burden of
18 demonstrating that a reasonable consumer would not sensibly assume that the
19 telemarketer was acting as the seller's authorized agent." *Id.* at 6593 ¶ 46.

20
21 59. Plaintiff's privacy has been violated by the above-described
22 telemarketing calls.

23
24 60. Plaintiff never provided his consent or requested the calls.

25
26 61. The calls were all unwanted, nonconsensual encounters.

27
28 62. Plaintiff and all members of the Class, defined below, have been

1 harmed by the acts of Defendants because their privacy has been violated and they
2 were annoyed and harassed. In addition, the calls occupied their telephone lines,
3 storage space, and bandwidth, rendering them unavailable for legitimate
4 communication, including while driving, working, and performing other critical
5 tasks.
6

7 8 V. CLASS ACTION ALLEGATIONS

9
10 63. Class Definition. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
11 Plaintiff bring this case on behalf of the Class (the “Class”) defined as follows:

12 **Robocall Class:** All persons within the United States: (1) to whose
13 cellular telephone number (2) Sunset (or an agent acting on behalf of
14 Sunset) placed a call (3) within the four years prior to the filing of the
15 Complaint (4) using a pre-recorded message.

16 64. Excluded from the Class are counsel, Defendants, any entities in
17 which Defendants have a controlling interest, Defendants’ agents and employees,
18 any judge to whom this action is assigned, and any member of such judge’s staff
19 and immediate family.
20

21 65. The Class, as defined above, is identifiable through telephone records
22 and telephone number databases.
23

24 66. The potential members of the Class likely number at least in the
25 hundreds because of the *en masse* nature of telemarketing calls.
26

27 67. Individual joinder of these persons is impracticable.
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1 68. Additionally, the disposition of the claims in a class action will
2 provide substantial benefit to the parties and the Court in avoiding a multiplicity of
3 identical suits.
4

5 69. Plaintiff is a member of the Class and will fairly and adequately
6 represent and protect the interests of the Class as he has no interests that conflict
7 with any of the class members.
8

9 70. Plaintiff and all members of the Class have been harmed by the acts of
10 Defendants, including, but not limited to, the invasion of their privacy, annoyance,
11 waste of time, and the intrusion on their telephone that occupied it from receiving
12 legitimate communications.
13

14 71. This class action complaint seeks injunctive relief and money
15 damages.
16

17 72. There are numerous questions of law and fact common to Plaintiff and
18 members of the Class. These common questions of law and fact include, but are
19 not limited to, the following:
20

21 a. whether Defendants, acting either directly or vicariously,
22 systematically made pre-recorded telemarketing calls;
23

24 b. whether Defendant Sunset is vicariously liable for any calls
25 placed by telemarketing vendors, like Quintessa, together with the correspondent
26 degree of liability as an among themselves;
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1 c. whether Defendants, acting either directly or vicariously, made
2 calls to Plaintiff and members of the Class without first obtaining prior express
3 written consent to make the calls; and
4

5 d. whether members of the Class are entitled to treble damages
6 based on the willfulness of Defendants' conduct.
7

8 73. Plaintiff's claims are typical of the claims of the Class.

9 74. Plaintiff's claims, like the claims of Class, arise out of the same
10 common course of conduct by Defendants and are based on the same legal and
11 remedial theories.
12

13 75. Common questions of law and fact predominate over questions
14 affecting only individual class members, and a class action is the superior method
15 for fair and efficient adjudication of the controversy. The only individual question
16 concerns identification of class members, which will be ascertainable from records
17 maintained by Defendants and/or their agents.
18

19 76. A class action is the superior method for the fair and efficient
20 adjudication of this controversy. Class-wide relief is essential to compel
21 Defendants to comply with the TCPA. The interests of individual members of the
22 Class in individually controlling the prosecution of separate claims against
23 Defendants are small because the damages in an individual action for violation of
24 the TCPA are small. Management of these claims is likely to present significantly
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1 more difficulties than are presented in many class claims. Class treatment is
2 superior to multiple individual suits or piecemeal litigation because it conserves
3 judicial resources, promotes consistency and efficiency of adjudication, provides a
4 forum for small claimants, and deters illegal activities. There will be no significant
5 difficulty in the management of this case as a class action.
6

7
8 77. Defendants have acted on grounds generally applicable to the Class,
9 thereby making final injunctive relief and corresponding declaratory relief with
10 respect to the Class appropriate on a class-wide basis. Moreover, on information
11 and belief, Plaintiff alleges that the telephone solicitation calls made by Defendants
12 and/or their affiliates, agents, and/or other persons or entities acting on Defendants'
13 behalf that are complained of herein are substantially likely to continue in the
14 future if an injunction is not entered.
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18 **FIRST CAUSE OF ACTION**
19 **Telephone Consumer Protection Act**
20 **Violations of 47 U.S.C. § 227(b)(3)**
21 **(On Behalf of Plaintiff and the Pre-Recorded Call Class)**

22 78. Plaintiff repeats the prior allegations of this Complaint and
23 incorporates them by reference herein.

24 79. The foregoing acts and omissions of the Defendants, and/or their
25 affiliates, agents, and/or other persons or entities acting on Defendants' behalf
26 constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by
27
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1 making calls, except for emergency purposes, to the cellular telephone numbers of
2 Plaintiffs and members of the Class delivering pre-recorded messages.

3
4 80. The Plaintiff is seeking to hold Sunset vicariously liable and
5 Quintessa directly liable for the conduct alleged.

6
7 81. As a result of Defendants' and/or their affiliates, agents, and/or other
8 persons or entities acting on Defendants' behalf's violations of the TCPA, 47
9 U.S.C. § 227, Plaintiff and members of the Class presumptively are entitled to an
10 award of \$500 in damages for each and every call made to their residential or
11 cellular telephone numbers using an artificial or prerecorded voice in violation of
12 the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

13
14
15 82. If the Defendants' conduct is found to be knowing or willful, the
16 Plaintiff and members of the Class are entitled to an award of up to treble
17 damages.

18
19 83. Plaintiff and members of the Class are also entitled to and do seek
20 injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other
21 persons or entities acting on Defendants' behalf from violating the TCPA, 47
22 U.S.C. § 227, by making calls, except for emergency purposes, to any cellular
23 telephone numbers using an artificial or prerecorded voice in the future.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- A. Certification of the proposed Class;
 - B. Appointment of Plaintiff as representative of the Class;
 - C. Appointment of the undersigned counsel as counsel for the Class;
 - D. A declaration that Defendants and/or their affiliates, agents, and/or other related entities' actions complained of herein violated the TCPA;
 - E. An order enjoining Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from making calls, except for emergency purposes, to any cellular telephone numbers using an artificial or prerecorded voice in the future;
 - F. An award to Plaintiff and the Class of damages, as allowed by law;
- and
- G. Orders granting such other and further relief as the Court deems necessary, just, and proper.

VI. DEMAND FOR JURY

Plaintiff demand a trial by jury for all issues so triable.

VII. SIGNATURE ATTESTATION

The CM/ECF user filing this paper attests that concurrence in its filing has

1 been obtained from each of its other signatories.

2
3
4 RESPECTFULLY SUBMITTED AND DATED this 1st day of August,
5 2024.

6
7
8 /s/ Dana J. Oliver

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